

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of )  
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Competitive Bidding Procedures for Auction 96 )  
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AU Docket No. 13-178

**REPLY COMMENTS OF NTELOS HOLDINGS CORP.**

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August 16, 2013

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**REPLY COMMENTS OF NTELOS HOLDINGS CORP.**

NTELOS Holdings Corp. (“nTelos”),<sup>1</sup> by its attorneys, hereby respectfully submits its comments on the *Public Notice* released by the Wireless Telecommunications Bureau (the “Bureau”) in the above-captioned proceeding pertaining to auction procedures for the H Block.<sup>2</sup> nTelos files these comments to urge the Bureau not to allow hierarchical package bidding (“HPB”) and to oppose the Federal Communication Commission’s (“FCC” or “Commission”) decision to license the H Block on an Economic Area (“EA”) basis. In support, the following is respectfully shown:

**I. INTRODUCTION AND SUMMARY**

nTelos is a regional provider of high-speed voice and data services for businesses and approximately 455,000 retail subscribers in select areas of Virginia, West Virginia, Maryland, Ohio, Kentucky, North Carolina, and Pennsylvania. nTelos’s licensed territories have a total population of approximately 7.9 million residents, of which its wireless network covers

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<sup>1</sup> For purposes of these Comments, the term “nTelos” refers to NTELOS Holdings Corp. and all of its FCC-licensed subsidiaries.

<sup>2</sup> In the Matter of Competitive Bidding Procedures for Auction 96, *Public Notice*, AU Docket No. 13-178, DA 13-1540 (rel. July 15, 2013) (*Public Notice*).

approximately 6.0 million residents. nTelos competes in its service areas against the nationwide wireless carriers, and it actively innovates and offers competitive services to its customers. For example, nTelos has recently partnered with DISH in a pilot program to provide fixed wireless broadband service in rural Virginia using spectrum in the 2.5 GHz range, which could result in enhanced competition to vastly underserved communities.<sup>3</sup> nTelos is also improving its service offerings by deploying a 4G LTE network, but, in order to build a next-generation network capable of competing against its much larger nationwide rivals, it must have access to additional spectrum in targeted areas.

nTelos has been actively seeking to acquire additional spectrum for the past several years in order to provide more robust services to its customers. Because no new wireless spectrum has been made available via auction since Auction 73 in 2008, the only available avenue for nTelos to acquire additional spectrum resources has been on the secondary market, but its efforts to do so have been largely unsuccessful. Indeed, as the Bureau is well-aware, the secondary market for spectrum resources is flawed for all participants except for the largest nationwide carriers. While competitive carriers like nTelos expend significant time and resources seeking secondary market opportunities, the practical reality is that they are all but foreclosed from this market. Thus, in many cases, auctions represent the only hope for carriers like nTelos to secure critical spectrum resources.

Accordingly, the H Block auction represents nTelos's best, near-term opportunity to gain the spectrum it needs to augment and fortify its competitive wireless network. In order for nTelos and similarly-situated, competitive carriers to have a fair opportunity to win the spectrum

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<sup>3</sup> "DISH and nTelos launch fixed wireless broadband pilot," Press Release, June 13, 2013, *available at* <http://ir.ntelos.com/Cache/1001176318.PDF?Y=&O=PDF&D=&FID=1001176318&T=&IID=4110676>.

they highly value and would put to its highest and best use, the Bureau must administer the H Block auction in a manner that gives competitive carriers a fair opportunity to acquire spectrum when pitted against the largest nationwide carriers. Specifically, the Bureau should refrain from adopting HPB in the H Block auction, and the Commission should reconsider its decision not to license the H Block on a Cellular Market Area (“CMA”) basis.

## **II. THE H BLOCK’S AUCTION PROCEEDURES MUST GIVE SMALLER BIDDERS A FAIR CHANCE AT WINNING SPECTRUM AND MUST AVOID THE MISTAKES OF AUCTION 73**

The Bureau’s procedures for auctioning the H Block must give smaller bidders a fair chance at winning spectrum, and it must avoid the mistakes made in Auction 73 that prevented smaller carriers from significantly enhancing their spectrum holdings. In a consolidating industry, smaller carriers depend on gaining additional spectrum to improve their service offerings so that they can effectively compete against the larger carriers. Comparatively, nTelos operates over an average of 20-30 MHz of spectrum in its service areas, while the largest carriers operate over an average of 100 MHz of spectrum nationwide. This spectrum-driven urgency renders the Bureau’s auction procedures exceedingly important.

Because of this importance, the Bureau must not adopt auction procedures that repeat the mistakes of Auction 73, which significantly limited the opportunities for smaller carriers to obtain usable spectrum. The procedures that were used to auction the 700 MHz spectrum created a host of undesirable outcomes that continue to plague the industry, and especially smaller carriers, to this day. Specifically, the use of package bidding in Auction 73 helped allow the largest carriers to acquire the lion’s share of the spectrum and, often, at more favorable pricing. For example, Verizon Wireless acquired licenses for the Upper 700 MHz C Block covering the contiguous United States for approximately \$4.7 billion, a price that was substantially lower per-MHz POPs than those paid for other 700 MHz licenses. Verizon’s bidding strategy helped to

push AT&T into the Lower 700 MHz B Block, which it has been actively consolidating.

Package bidding, combined with the auction's anonymous bidding procedure, also contributed to smaller carriers being stranded in the Lower 700 MHz A Block. This valuable spectrum has thus far been underutilized, not because the smaller carriers do not have a desperate need for it, but because of an ongoing lack of device interoperability with other spectrum bands caused by the uneven license dispersion. In total, Auction 73's rules helped AT&T and Verizon acquire \$16.3 billion worth of spectrum licenses, out of the \$19.6 billion spent by all carriers combined. To avoid a similar outcome in the H Block auction, the Bureau should structure the auction rules to provide legitimate opportunities for competitive carriers, including smaller carriers, to obtain spectrum.

### **III. THE BUREAU SHOULD NOT ADOPT HIERARCHICAL PACKAGE BIDDING FOR THE H BLOCK BECAUSE IT WOULD UNFAIRLY HARM SMALLER BIDDERS**

The Bureau's hierarchical package bidding ("HPB") proposal would create four separate tiers of differently-packaged licenses on which bidders could bid.<sup>4</sup> The first tier would offer licenses for individual EAs; the second tier would offer licenses for individual MEAs; the third tier would offer licenses for individual REAGs; and the fourth tier would offer one nationwide license.<sup>5</sup> After each round of the auction, the Bureau would determine which combination of bids across the different tiers would generate the greatest gross revenue.<sup>6</sup> This methodology would only allow the H Block to be licensed by individual EAs if the amounts bid on each EA

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<sup>4</sup> *Public Notice* at ¶ 17.

<sup>5</sup> *Id.* at ¶ 20.

<sup>6</sup> *Id.* at ¶ 21.

could combine to generate more revenue than the bids on each, successively larger package of EAs.

The Bureau should not allow HPB to be used in the H Block auction because it would (a) bias the auction in favor of the largest and best-funded bidders, (b) prevent smaller carriers from winning the licenses they need to augment and expand their networks to serve rural areas, and (c) add unnecessary complexity to the H Block auction. In short, it would significantly diminish the opportunities for competitive carriers to acquire badly needed spectrum.

**A. Hierarchical Package Bidding Would Bias the Auction in Favor of the Largest Bidders**

HPB would inherently bias the auction in favor of the largest and best-funded wireless carriers because those carriers could manipulate their bidding strategies to increase the likelihood that H Block spectrum will be auctioned on a package basis. Under the Bureau's HPB proposal, the Bureau would award packaged licenses if the bids on those packages generate more revenue than the combined bids on individual EAs. Under such a methodology, the largest wireless carriers may have an incentive to take steps to depress the amount of revenue that individual EA-based licenses could generate and inflate the amount of revenue that packaged licenses would generate. Specifically, the largest carriers could refrain from bidding on any individual EAs and exclusively bid on packages of licenses. If the largest carriers refrain from bidding on EA-based licenses, which they would highly desire in a non-HPB auction, then the lack of the large carrier bids would decrease the demand for the individual EA-based licenses. This decreased demand would prevent the auction revenue for the EA-based licenses from being driven up to their full values. If the auction price for individual EA-based licenses is depressed, then it would be extremely difficult for the EA-based licenses to generate more auction revenue than the packages. Further, if the largest carriers bid solely on packaged licenses, then they would

effectively eliminate price competition from smaller carriers because smaller carriers have neither the desire nor the means to bid on packaged licenses. This exact scenario occurred in the 700 MHz auction, where Verizon Wireless used package bidding to buy a near-nationwide license for the Upper C Block at a price that was substantially lower on a per-MHz POPs basis than what was paid for other 700 MHz licenses. For this reason, the use of HPB could dramatically tilt the H Block auction in favor of the largest, best-funded bidders and foreclose smaller bidders from winning any spectrum.

AT&T's assertion that HPB is a fair and efficient way to accommodate bidders of all sizes is unfounded. AT&T contends that HPB would enable smaller bidders to focus their efforts on winning individual EAs while larger carriers could focus on winning a package of licenses.<sup>7</sup> While AT&T is correct that these are the respective bidding strategies that smaller and larger carriers are likely to adopt, these strategies render it extremely unlikely that smaller carriers will ever be able to win an individual EA-based license for the reasons described above. Because of this likely outcome, HPB is anything but fair and efficient, and it should not be utilized.

**B. Hierarchical Package Bidding Would Prevent Smaller Carriers from Winning Licenses They Could Use to Serve Rural Areas**

The Bureau should not allow HPB to be used in the H Block auction because it would make it more difficult for smaller carriers to win spectrum licenses that complement their service areas, particularly in rural areas. As described above, HPB fosters a bidding environment in which the largest bidders could foreclose smaller bidders from winning EA-based licenses. Instead, the EA-based licenses that smaller bidders highly value would likely be packaged into larger geographic units and auctioned to nationwide bidders that have not historically focused on

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<sup>7</sup> See In the Matter of Competitive Bidding Procedures for Auction 96, *Comments of AT&T, Inc.*, 2-3, Aug. 5, 2013.



deploying service to rural areas. Such a result would be inefficient because spectrum licenses would not be awarded to their highest-value users, and, thus, would not be put to their highest and best uses.

Auction procedures that foreclose smaller carriers from winning spectrum and reduce the deployment of service to rural areas would frustrate the aims of the Communications Act of 1934, as amended (the “Act”). The Act requires the Commission’s competitive bidding procedures to promote “the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas [ . . .];” and “economic opportunity and competition [ . . . ] ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”<sup>8</sup> If the Bureau adopts HPB, and smaller carriers are not able to win spectrum licenses that they could use to serve rural areas, then both of these statutory mandates will have been violated.<sup>9</sup>

The record in this proceeding further supports nTelos’s conclusion that HPB would prevent smaller carriers from winning spectrum that they could use to serve rural areas. For example, as US Cellular Corporation astutely observes:

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<sup>8</sup> 47 C.F.R. §§ 309(j)(3)(A), (B).

<sup>9</sup> See *In the Matter of Competitive Bidding Procedures for Auction 96, Comments of United States Cellular Corporation*, 11, Aug. 5, 2013 (*Comments of USCC*); *In the Matter of Competitive Bidding Procedures for Auction 96, Comments of the Rural Telecommunications Group, Inc.*, 3, Aug. 5, 2013 (*Comments of RTG*); *In the Matter of Competitive Bidding Procedures for Auction 96, Comments of Cellular South, Inc.*, 2, Aug. 5, 2013.

[P]redefined packages would invariably contain all of the available H Block license areas, not simply those most desired by the largest bidders. Specifically, HPB's predefined packages could cause less densely-populated markets, which large bidders typically do not focus on during an auction because these markets are not a key part of their business plans, to "come along for the ride" and end up as part of a large package, and thus be out of reach for smaller bidders who truly desire to serve these more rural markets.<sup>10</sup>

Similarly, the Rural Telecommunications Group ("RTG") concludes that, if HPB allows large carriers to win packaged licenses, then "rural and remote communities nationwide would remain overlooked and underserved as the large carrier or carriers proceed to focus their H Block deployments on the most profitable and densely populated areas of the country."<sup>11</sup>

If HPB were excluded, however, each individual EA-based license would be auctioned at the price that *all* market participants dictate, and each particular license would go to the bidder that values it the most.<sup>12</sup> This efficient allocation of licenses would ensure that winning bidders are most likely to put the spectrum to its highest and best use. For example, a regional carrier like nTelos would be able to focus its resources on the EA-based licenses that best complement its existing spectrum holdings and could be used to augment and enhance its service offerings. Because smaller carriers are more likely to provide service to rural areas, allowing these carriers a fair opportunity to win the licenses they need would result in those carriers providing enhanced or additional services to rural communities, a stated Commission policy objective.

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<sup>10</sup> *Comments of USCC* at 4.

<sup>11</sup> *Comments of RTG* at 2.

<sup>12</sup> See In the Matter of Competitive Bidding Procedures for Auction 96, *Comments of Sprint Corporation*, 8, Aug. 5, 2013 (arguing that eliminating HPB and using a simultaneous, multiple-round auction format "promotes awarding licenses in the most efficient manner," which will result in winning bidders that "value each license the most") (*Comments of Sprint*).

**C. Hierarchical Package Bidding Would Add Unnecessary Complexity to the H Block Auction and May Deter Participation by Smaller Bidders**

The Bureau should not adopt HPB because it would add unnecessary complexity to the H Block auction and increase bidders' participation costs. Conducting an auction with HPB is much more complicated than conducting an auction without HPB. For example, if the H Block auction uses HPB, there will be many more possible bids that each bidder could place, and, if bidders want to win a license for a particular EA, then they will have to consider a wider range of bidding strategies. Further, HPB would make it more difficult for the Bureau to calculate the winning bids at the end of each round because the gross auction revenue for different combinations of bids across the HPB tiers would have to be calculated and compared repeatedly, with varying outcomes. This added complexity increases uncertainty and requires bidders to consider a wider range of possibilities when they formulate their bidding strategies throughout the auction.

nTelos echoes Sprint's concern that "the more packages and bid options facing each participant, the more it will cost each player to evaluate its options and probability for success," which may "limit overall auction participation, including the participation of smaller carriers."<sup>13</sup> RDL Management similarly points out that "Competitive Carriers [. . .] are less likely to have the resources to evaluate and undertake such a complex auction, [and] it is unlikely that they would be successful."<sup>14</sup>

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<sup>13</sup> *Id.* at 7-8.

<sup>14</sup> In the Matter of Competitive Bidding Procedures for Auction 96, *Comments of RDL Management, LLC*, 7-8, Aug. 15, 2013.

T-Mobile's comments urge the Bureau to adopt HPB, not because it would be beneficial on the merits, but because the H Block auction could serve as a testing ground for the Bureau to evaluate whether HPB should be used in future auctions.<sup>15</sup> T-Mobile, however, overlooks the essential role that H Block spectrum plays to many smaller, spectrum-constrained carriers that are likely to be shut out of winning H Block spectrum if HPB is used. If T-Mobile wishes to test a new bidding theory, then it should partner with the Commission to conduct a simulation. The H Block auction is vitally important, and the stakes are too high for smaller carriers, for the auction to serve as a mere testing ground. Because the complexity and uncertainty that HPB would bring to the H Block auction are unnecessary, and because it may deter participation by smaller bidders, HPB should not be used.

**IV. THE COMMISSION SHOULD HAVE DECIDED TO LICENSE THE H BLOCK ON A CELLULAR MARKET AREA BASIS TO FACILITATE PARTICIPATION BY SMALLER BIDDERS AND INCREASE AUCTION REVENUE**

nTelos objects to the Commission's decision to license the H Block by EAs rather than CMAs. In the H Block *Report and Order*, the FCC decided to license the H Block by EAs, reasoning that the geographic size would facilitate access to spectrum by both large and small carriers.<sup>16</sup> The Commission rejected proposals to license the H Block by CMAs because EA-based licensing would make the H Block consistent with its adjacent bands and because CMAs "do not 'nest' easily into EAs, which could make it more difficult for licensees to aggregate

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<sup>15</sup> See In the Matter of Competitive Bidding Procedures for Auction 96, *Comments of T-Mobile USA, Inc.*, 4, Aug. 5, 2013.

<sup>16</sup> In the Matter of Service Rules for Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands, *Report and Order*, WT Docket No. 12-357, FCC 13-88, ¶ 39 (rel. June 27, 2013) (*Report and Order*).

license areas to match the neighboring bands.”<sup>17</sup> The Commission concluded that these benefits outweighed concerns that “small and rural carriers cannot afford EAs and that, because EAs include both urban and rural areas, large carriers that purchase EAs can focus their buildout efforts on urban centers to the detriment of rural customers.”<sup>18</sup>

nTelos believes that the Commission struck the wrong balance and should have decided to license the H Block by CMAs.<sup>19</sup> The Commission and the Bureau should both favor a building block approach to spectrum acquisition that uses the smallest feasible units to generate the most auction revenue and provide the greatest flexibility to bidders. Such an approach necessarily excludes all forms of package bidding. Instead, robust auction participation and license dispersion are best served when participants are able to bid on licenses covering manageable geographic areas. Larger carriers would be able to aggregate geographic licenses into larger areas, while the CMA license size would preserve the ability of smaller and regional carriers to obtain local licenses suited to their budgets and business plans.

Licensing spectrum by CMAs would also likely capture more auction revenue because more carriers, including smaller carriers with limited resources, would be likely to bid on CMAs. The increased market demand would likely drive auction revenue up, and likely ensure that the highest-value users win access to the spectrum. This added efficiency would result in the spectrum being used to provide higher-quality services to more people. Conversely, EA-based licenses may prohibit participation by smaller carriers, which would reduce auction revenue and eliminate needed service to rural areas. For these reasons, nTelos urges the Commission to

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<sup>17</sup> *Id.* at ¶ 42.

<sup>18</sup> *Id.* at ¶ 41.

<sup>19</sup> RTG’s comments in this proceeding support nTelos’s determination. *See Comments of RTG* at 5.

reconsider its decision not to license the H Block by CMAs, and it hopes that the Commission will consider the benefits of smaller building block license sizes in future auctions.

## **V. CONCLUSION**

For the foregoing reasons, the Bureau should reject its proposal to use HPB in the H Block auction. HPB would bias the auction in favor of the largest and best-funded bidders, prevent smaller carriers from winning the licenses they need to augment and expand their networks to serve rural areas, and add unnecessary complexity to the H Block auction. Instead, the Bureau should use a pure building block approach, which would accommodate bidders' varied spectrum needs and increase auction revenue. nTelos also opposes the Commission's decision to license the H Block by EAs rather than CMAs, and it urges the Commission to reconsider the licenses sizes for this and future auctions.

Respectfully submitted,  
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